

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**CECIL CURRY,**

**Plaintiff,**

**VS.**

**Lieutenant STEVE MCDAVE, and  
DEPUTY JEROME ROBERTSON,**

**Defendants.**

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**CIVIL No: 5:16-CV-0024-MTT-MSH**

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**REPORT AND RECOMMENDATION**

On August 15, 2016, this Court issued an Order notifying Plaintiff that Defendants McDave and Robertson filed a motion to dismiss (ECF No. 21) the Complaint. Plaintiff was therein directed to respond to the motion within thirty days. Order 1-3, ECF No. 22. Specifically, Defendants contend that Plaintiff's action should be dismissed for failure to prosecute his claims, for failure to comply with a court order requiring Plaintiff to advise the Court of any change in his address, and for Plaintiff's failure to participate in discovery. Defs.' Br. in Supp. Mot. to Dismiss 1-4, ECF No. 21-1; *see also* Fed. R. Civ. P. 41(b) & 37(b). Plaintiff was advised by the Court that his remaining claims could be dismissed if he failed to comply with the Court's Orders and respond to the Defendants' motion to dismiss. *See* Order 2-3, Aug. 15, 2016; *see also* Order for Service 4-6, Mar. 31, 2016, ECF No. 9.

Prior to filing the motion to dismiss, Defendants made multiple good faith efforts to contact Plaintiff. *See* Hensel Aff. ¶¶ 3-5, ECF No. 21-2. On August, 1, 2016,

Defendants' counsel received a phone call from the resident at Plaintiff's address on file.

*Id.* ¶ 6. The resident, a Ms. Adams, informed Defendants' counsel that "Plaintiff [does] not reside there[,]” and asked counsel “to cease sending correspondence to that address.”

*Id.* Neither the Court nor Defendants have received notice from Plaintiff that his address changed since April 14, 2016. *See* Address Notice 1, ECF No. 14. Plaintiff similarly failed to respond to Defendants' motion to dismiss.

Plaintiff has thus failed to comply with the Court's orders and has failed to prosecute his case. Consequently, the Court recommends dismissal of Plaintiff's Complaint with prejudice pursuant to Federal Rules of Civil Procedure Rule 41(b). It is recommended that Defendants' motion (ECF No. 21) be granted and Plaintiff's Complaint be dismissed.<sup>1</sup> Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and

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<sup>1</sup> Defendants also seek attorneys' fees from Plaintiff. The circumstances of this case do not warrant such a sanction, so it is recommended that Defendants' request be denied.

the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 7th day of November, 2016.

/s/ Stephen Hyles  
UNITED STATES MAGISTRATE JUDGE